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10/679,235	10/03/2003	Stephane F. Rouanet	03031	3544

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EXAMINER	
HUYNH, KHOA D	
ART UNIT	**PAPER NUMBER**
3751	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	**Application No.** 10/679,235	**Applicant(s)** ROUANET ET AL.
	Examiner Khoa D. Huynh	**Art Unit** 3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,10-16 and 19-62* is/are pending in the application.

4a) Of the above claim(s) *19-53* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,10-16 and 54-62* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 October 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date *01/16/07*.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the panel as recited in claims 1-7, 10-16 and 54-62; the internal channels as recited in claim 56; and the panel is comprised in a glazing system as recited in claim 57 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 57 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim calls for "the panel is comprised in a glazing system". Nevertheless, such claimed subject matter was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Therefore, such claimed subject matter constitutes new matter.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 57 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 57 calls for "the panel is comprised in a glazing system". Such recitations render the claim indefinite since it does not have detailed supports in the original instant specification. Since the claim does not clearly set forth the metes and bounds of the patent protection desired, the scope of the claim is unascertainable.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1, 3, 4-7, 10, 11, 56 and 58, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Rocchio et al. (US 2004/0003866 A1) in view of Niijima et al. (JP 08268534).

The Rocchio et al. reference discloses an apparatus for filling a particulate material or matter (115) from a supply container (105) into a vessel or panel (125). As schematically shown in Figure 2c, the vessel or panel includes a length, a width and an internal volume or internal channel. As schematically shown in Figure 5A, the vessel or panel is subject to a vibratory motion (Fig. 5A), via an actuator (225), as the internal volume of the vessel or panel in being filled with the particulate material to the desire amount. Even though the Rocchio et al. reference remains silent regarding static electricity being produced, it, however, would have been obvious to one of ordinary skill in the art to recognize that particulate matter does produce electrostatically chargeable particles since it is a general knowledge in the powder filling art that particulate material or matter is normally charged with or agglomerated due to large amount of the static electricity generated during filling and by the vibration device.

The Rocchio et al. reference DIFFERS in that it does not specifically disclose that at least a portion of static electricity is discharged as claimed. Attention, however, is directed to the Niijima et al. reference which discloses a power supply device. The device includes a vibration device (2) to excite the power (7) inside the container (at 3). The Niijima et al. reference also discloses that the gutter part (4) is treated (e.g. humidified air) prior to filling to discharge or eliminate the static electricity generated by the vibration device (2). Therefore, it would have been obvious to one of ordinary skill in the art the time the invention was made to have modified the Rocchio et al. device by injecting humidified air into the powder, in view of the teaching of Niijima et al., in order to enhance the densification of the particles by preventing them from agglomerating due to large amount of static electricity.

Regarding claims 1, 10 and 56, the method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

Regarding claims 3, 4 and 58, as schematically shown in Figure 5B or 5C, the vessel is further subject to a tamping motion, via a device (at 240 or 250), along the length of the vessel by impacting a portion of the vessel through a stationary surface (at 130). The method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

Regarding claim 5, the modified Rocchio et al. reference DIFFERS in that it does not specifically indicate tamping motion subjects to at least one deceleration of at least about 900 m/s^2 as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such deceleration for the tamping motion since discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).*

Regarding claim 6, the Rocchio et al. reference also discloses that the vessel or panel is simultaneously subjected to the tamping motion and the vibratory motion (page 4, left column, lines 7-12). The method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

Regarding claim 7, the Rocchio et al. reference also discloses that the vibratory motion is ceased before the vessel or panel is subjected to the tamping motion (page 4, left column, lines 7-12). The method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

Regarding claim 11, the modified Rocchio et al. reference DIFFERS in that it does not specifically indicate the relative humidity of about 80% or more as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such percentage of relative humidity for the humidified air since discovering an optimum value for humidified air of a result effective variable involves only routine skill in the art. *In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).*

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Rocchio et al. (as discussed above) in view of Krush et al. (6250792).

The modified Rocchio et al. reference DIFFERS in that it does not specifically disclose that the vibratory motion is a sinusoidal motion as claimed. Attention, however, is directed to the Krush et al. reference which discloses a vibration device (10) used in powders filling/dispensing apparatus (col. 1, lines 12-25; col. 5, line 15) is known. The vibration device produces sinusoidal vibration or motion to transfer forces and impact impulses to the container wall to promote free flow of powder material. Therefore, it would have been obvious to one of ordinary skill in the art the time the invention was made to have modified the modified Rocchio et al. device by employing a sinusoidal vibration or motion, in view of the teaching of Krush et al., in order to disturb the powder in the container to promote free flow of powder. The method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

9. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Rocchio et al. (as discussed above) in view of Sato et al. (US 2004/0134560).

The modified Rocchio et al. reference DIFFERS in that it does not specifically disclose the use of a corona discharge to reduce the amount of static electricity as claimed. Attention, however, is directed to the Sato et al. reference which discloses a power supply device. The device includes a corona charging device (29) to ionize air for purpose of delivering ions to surfaces to be charged. Therefore, it would have been obvious to one of ordinary skill in the art the time the invention was made to have modified the Rocchio et al. device by employing a corona charging device, in view of the teaching of Sato et al., in order to apply a uniform charge of positive polarity across the entire surface of the receptacle. The method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

10. Claims 14-16, 54, 55 and 59-62, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over modified Rocchio et al. (as discussed above).

The modified Rocchio et al. reference DIFFERS in that it does not used to fill powder comprising metal oxide aerogel particles as claimed. It, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Rocchio et al. device to fill powder containing metal oxide aerogel particles. Such modification would considered a mere choice of a preferred filling material on the basis of its suitability for the intended use especially since (a) the applicant also discloses that the method can be used to fill the receptacle with any suitable particulate matter (page 15, paragraph [0053]) and b) the Rocchio et al. reference further discloses that the apparatus could be used in other filling processes (page 2, paragraph [0026]).

Regarding claims 14-16, 54, 55 and 59-62, the method as claimed would be inherent during the normal use and operation of the modified Rocchio et al. device.

Response to Amendment

11. Applicant's amendment, filed on 01/16/07, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

12. The amendment filed 01/16/07 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the panel is comprised in a glazing system as recited in new claim 57.

Applicant is required to cancel the new matter in the reply to this Office Action.

Response to Arguments

13. Applicant's arguments filed on 01/16/07 with respect to the pending claims have been fully considered. However, such arguments are deemed not persuasive.

Applicant asserts that the Rocchio et al. reference does not teach a method for filling a panel as claimed in amended claims. See the Remarks section, page 15, last paragraph. The examiner disagrees.

Firstly, applicant claimed panel is nothing more than the disclosed vessel 32. And lastly, applicant did not provide any detailed structural description of the claimed panel distinguishable over the disclosed vessel 32. Therefore, for the purpose of examination, the panel is being construed as the vessel.

Applicant also asserts that there is no suggestion to combine the teachings of Rocchio et al. and Niijima et al. to arrive at applicant's claimed invention. See remarks section, pages 14-17. The examiner disagrees.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this instance, Rocchio et al. does suggest a method for filling a vessel or panel, subjecting such vessel or panel to a vibratory motion, filling a portion of the internal volume of the panel and repeating the steps until the vessel is filled with the predetermined amount (paragraph [0028]), except for the discharge of static electricity. Niijima et al., in the field of applicant's endeavor, is relied herein for the teaching of discharging or eliminating the static electricity, prior to filling, by injecting humidified air into the powder in order to enhance the densification of the particles by preventing them from agglomerating due to large amount of produced static electricity. The examiner maintains that such modification is well within one of ordinary skill art and is not convinced that the discharging of the static electricity produced prior to filling rises to the level of patentability.

Applicant also argues that there is no incentive to spray the pharmaceutical formulations with humidified air since the humidity would have been likely to impair or destroy important powder characteristics. See remarks section, page 17, last paragraph. The examiner disagrees. While it may be true that humidity would have been likely to impair or destroy important pharmaceutical formulations characteristics, however, Rocchio et al. also teaches that the present could be used for filling other powder not necessary pharmaceutical powder. Therefore, the combination of Rocchio et al. and Niijima et al. does teach applicant's invention as claimed.

The above arguments are also applied to other claims.

Also, applicant's arguments with respect to amended pending claims and new claims have been considered but are moot in view of the new grounds of rejections as discussed supra.

Conclusion

14. Applicant's amendment necessitated the revised and new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Khoa D. Huynh
Primary Examiner
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HK
03/14/2007